LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7891
BILL NUMBER: SB 465

NOTE PREPARED: Mar 27, 2003
BILL AMENDED: Mar 27, 2003

SUBJECT: Streamlined Sales Tax.

FIRST AUTHOR: Sen. Borst
FIRST SPONSOR: Rep. Welch

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill adds or amends various Sales Tax definitions and exemptions in order to conform to the Streamlined Sales and Use Tax Agreement. It establishes specific sourcing rules for determining the taxing situs of telecommunications services (other than mobile telecommunications services otherwise covered by current law). The bill establishes general sourcing rules for other types of transactions. It amends the statute concerning bad debt deductions from gross retail income to conform to the agreement. The bill also amends references to carryout food in the food and beverage tax statutes to conform to the new Sales Tax definitions. The bill authorizes the Department of State Revenue to adopt emergency rules to implement this bill.

The bill provides that an out-of-state vendor that enters into a sales contract or sells property to a state agency or a state educational institution consents to collect Sales and Use Tax on transactions in Indiana. The bill prohibits a vendor that has not paid sales or use tax when due from doing business with a state agency or a state educational institution.

Effective Date: (Amended) Upon passage; July 1, 2003; January 1, 2004.

Explanation of State Expenditures: (Revised) *Department of State Revenue:* The Department of State Revenue is expected to absorb any administrative costs associated with the adoption of the Streamlined Sales and Use Tax Agreement.

Collection of the Sales Tax by Out-of-State Vendors: This provision will require the Department of Administration and other purchasing agents for state agencies and state educational institutions to require that an offeror submitting a bid or a contract to certify that the offeror is not an ineligible vendor. Eligible vendors must obtain a registered retail merchant certificate with the Department of State Revenue and must be timely in the remittance of Sales Tax collections owed to the state under IC 6-2.5. This provision could have a minimal impact on the workload of purchasing agents and the Department. However, it is presumed that any impact could be absorbed using existing staff and resources.

The provision also requires the Department of State Revenue to provide periodically a listing to the Department of Administration and other state purchasing agents of merchants who are delinquent in remitting or paying Sales Tax. It is presumed that the Department could absorb any additional costs associated with this provision.

Explanation of State Revenues: (Revised) *Streamlined Sales and Use Tax Agreement:* In general, conforming Indiana Sales Tax law with the Streamlined Sales and Use Tax Agreement is not expected to change the taxability of items purchased in Indiana. However, the conforming definitions will make changes to the tax status of four food items–ice, water, fruit and vegetable drinks, and certain types of candy. It is estimated that the net impact of changing these four definitions will decrease state Sales Tax revenue by potentially $3.2M to $8.8 M each year. The specific impact of the bill will partially depend on further rulemaking by the Department of State Revenue and the marketplace's reaction to the Agreement.

Ice-Under current law, sales of packaged ice are subject to the state's Sales Tax. The changes in this bill will make packaged ice sales exempt from the tax. Based on industry data, it was estimated that modifying the taxability of ice sales will reduce state Sales Tax revenue by approximately $0.9 M each year.

Water- Drinking water sold in retail locations and labeled "natural spring water" is currently exempt from the Sales Tax. This bill would make all drinking water sold at retail locations exempt from the state's tax. (All water sold though vending machines remains taxable under this bill). Based on adjusted regional and national data, it was estimated that exempting all drinking water sold through retail outlets would decrease state Sales Tax revenue by $5.0 M each year.

Fruit and Vegetable Drinks- The bill will change the applicability of the Sales Tax on beverages that are noncarbonated and contain fruit or vegetable juice. Under current law, beverages that contain *any* fruit or vegetable juice are exempt from the state Sales Tax. Under the new definitions contained in the agreement, only sales of drinks with more than 50% juice by volume will be exempt from the Sales Tax. As a result of this change, state revenue is expected to increase by approximately $6.5 M each year.

Candy-Under current law, sales of candy are subject to the state's Sales Tax. This bill changes the definition of candy for Sales Tax purposes to exclude certain items that contain flour. This change will effectively exempt candy and confection products that contain flour from the state's Sales Tax. Based on adjusted industry and federal data, it is estimated that this provision could reduce state Sales Tax revenue from $3.8M to $9.4 M each year. Candy sales through vending machines would not be affected by this bill.

Taxing Situs of Telecommunications Services: Implementing the Taxing Situs of Telecommunications Services provision will clarify the taxing jurisdiction on certain interstate calls made to and from Indiana. Since Indiana does not impose the Sales Tax on interstate calls, the bill is not expected to impact state Sales Tax revenue. However, if Indiana were to impose the Sales Tax on interstate calls in the future, the provision would provide a framework from which Indiana could receive Sales Tax revenue that would otherwise not have been collected.

Bad Debt Collection and General Sourcing Rules: These provisions conform with the current administrative practices of the Department of State Revenue and are not expected to have a fiscal impact.

Collection of the Sales Tax by Out-of-State Vendors: This bill would prohibit a vendor from selling or leasing property, supplies, or services to any state agency and state educational institutions unless the vendor obtains a registered retail merchant certificate from Department of State Revenue (DOR) and is not delinquent in the remitting Sales Taxes. By registering, a vendor agrees to collect the state's Sales Tax on taxable transactions made with Indiana consumers. Under current law, firms located outside of the state are under no legal obligation to collect taxes owed by Indiana residents. Indiana residents who purchase goods from out-of-state firms are responsible for paying Indiana's Use Tax. This provision will have an indeterminable positive impact on state Sales Tax revenue. The impact of this proposal will be contingent upon the number of potential out-of-state vendors that register with the DOR and the volume of taxable sales that vendors and other merchants have with Indiana residents in which the Sales Tax in not collected or remitted.

Background Information: The Streamlined Sales Tax Project addresses the growing problem of collecting Sales and Use Taxes on goods purchased via the Internet, catalogs, and other remote sellers. As of July 25, 2002, 35 states have formally joined the Streamlined Sales Tax Project through legislative enactments or executive orders. The project seeks to remove the burden of collecting Sales Taxes from remote sellers through a simplification of state Sales and Use Tax structures, which would be applied in a more uniform way. Participation in the project would be voluntary for both remote sellers and states. The system would use certified technology providers to calculate, collect, and, should the seller choose, remit the proper Sales or Use Tax directly to the state.

In theory, removing the burdens of collecting Sales Taxes from remote sellers would help the state collect Sales and Use Taxes that currently go uncollected. Studies have estimated a wide range in the amount of revenue that Indiana may forgo because of uncollectible taxes on remote sales. One widely-reported study from the University of Tennessee's Center for Business and Economic Research estimates that Indiana may have forgone approximately $215.5M in CY 2001 in Sales Tax collections from sales over the Internet.

As a point of reference, in CY 2000 approximately 26,401 out of 2,875,104 Indiana Income Tax filers voluntarily included $947,331 in Use Taxes owed from purchases made from out-of-state firms.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: All; Department of State Revenue; Department of Administration.

Local Agencies Affected:

Information Sources: Beverage World; Beverage Aisle; Progressive Grocer; U.S. Census Bureau; Convenience Store News; Institute for State Studies; Beverage Marketing Corporation; Electronic Commerce Association; National Confectioners Association; Chocolate Manufactures Organization; U.S. Department of Agriculture; U.S. Department of Commerce.

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